

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

vs.

Case No. 1:20-cv-01134-KWR-SCY

DAXTON MARTINEZ,

Defendant.

ORDER DENYING MOTION TO DISMISS

THIS MATTER comes before the Court upon Defendant Daxton Martinez's Motion to Dismiss (**Doc. 5**). Defendant Daxton Martinez seeks to dismiss this case on the ground that he subsequently filed his own declaratory judgment action in state court. *See Daxton Martinez v. State Farm Fire & Casualty*, D-202-CV-2020-06140, Second Judicial District Court of the State of New Mexico.

That case was removed to this Court, and Mr. Martinez moved to remand it. In a Memorandum Opinion and Order filed concurrently herewith, the Court declined to remand the case. *See Daxton Martinez v. State Farm Fire and Casualty Company*, 1:20-cv-1278 KWR/SCY (D.N.M.). Because there is no pending state case, the Court declines to dismiss this case.

Alternatively, to the extent Mr. Martinez argues that the Court should abstain from exercising jurisdiction over this case, the Court declines to do so for the reasons stated in the Memorandum Opinion and Order filed concurrently herewith in *Daxton Martinez v. State Farm Fire and Casualty Company*, 1:20-cv-1278 KWR/SCY (D.N.M.).

Mr. Martinez summarily asserted in a reply brief that this Court lacks diversity jurisdiction over this case because he only asks for \$75,000 from State Farm. If Mr. Martinez genuinely

contests jurisdiction, the Court instructs him to file a motion to dismiss for lack of jurisdiction so that State Farm may have an opportunity to respond and create an appropriate record.

THEREFORE, IT IS ORDERED that the Mr. Martinez's Motion to Dismiss **(Doc. 5)** is hereby **DENIED** for the reasons described in this Memorandum Opinion and Order.

IT IS SO ORDERED.



KEA W. RIGGS
UNITED STATES DISTRICT JUDGE